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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-3

CURTIS PARHAM,

Appellant,

versus

ELLIS FRANKLIN HUGHES,

Appellee.

Appeal from the Supreme Court
of the State of Georgia

MOTION OF APPELLEE TO DISMISS APPEAL

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Pursuant to Rule 16(b) of the Rules of the Supreme Court of the United States, Appellee, within 30 days from the receipt of Appellant's jurisdictional statement, respectfully moves that the appeal herein be dismissed on the ground that said appeal does not present a substantial Federal question.

SUPPLEMENT TO APPELLANT'S STATEMENT OF THE CASE

Appellant contends that he is the proper party to maintain an action for the alleged wrongful death of his illegitimate child. However, in his statement of the case, Appellant did not point out to this Court that Estelle A. Moreen, as administratrix of the estate of Lemuel Parham, the deceased illegitimate child of Appellant, has also brought an action against Appellee for the alleged wrongful death of said Lemuel Parham in the Superior Court of Richmond County, State of Georgia, Civil Action File No. 5710-C (R. 15-18). In said complaint filed by Estelle A. Moreen, as administratrix of the estate of Lemuel Parham (R. 15-17), said Estelle A. Moreen alleged that she was the proper party to maintain an action for the alleged wrongful death of said Lemuel Parham. In this regard, *Georgia Code Annotated* 105-1309 provides as follows:

> In cases where there is no person entitled to sue under the foregoing provisions of this Chapter [the Georgia Wrongful Death Chapter], the administrator or executor of the decedent may sue for and recover and hold the amount recovered for the benefit of the next of kin. In any such case, the amount of the recovery shall be the full value of the life of the decedent.

As can be seen, the Georgia Legislature has provided for a method of recovery in cases such as the one at bar without having to open the Pandora's box of proving paternity in the death action, which would ultimately result if Appellant's position were upheld.

I.
THE FEDERAL QUESTIONS ARE NOT SUBSTANTIAL

Appellee respectfully submits that the exclusion of fathers of illegitimate children from the benefits of an alleged wrongful death action is substantially related to the legitimate state interests set out in the Georgia Supreme Court decision; that the Georgia Wrongful Death Statute does not violate the equal protection clause or due process clause of the United States Constitution; and that the Georgia Legislature's policy of excluding the father of an illegitimate child from bringing an action for the alleged wrongful death of said child is not an arbitrary legislative classification which should be struck down. As such, no substantial Federal questions are presented for review by this Court.

In *Quilloin v. Walcott*, 98 S. Ct. 549, 553 (1978), this Court stated, in discussing the opinion of the Georgia Supreme Court at 238 Ga. 230, that:

> The majority [of the Georgia Supreme Court] relied generally on the strong state policy of rearing children in a family setting, a policy which in the court's view might be thwarted if unwed fathers were required to consent to adoptions.

This same strong state policy is a legitimate state interest to be recognized and protected in the case at bar as so held by the Georgia Supreme Court.

Although Appellant argues that the problem of proving paternity is not a legitimate state interest so as to justify denying the natural father of an illegitimate child a cause of action for the death of said child, Appellee respectfully disagrees. By recognizing the right of the mother of an illegitimate child to bring a suit for the wrongful death of the child, the Georgia Legislature is recognizing that an alleged negligent tortfeasor should not be allowed to profit from his alleged wrongdoing. In not one of the cases cited by the Appellant has the United States Supreme Court ruled that the natural father of an illegitimate child has a right of action for the death of the child. The results obtained by this Court in *Glona v. American Guaranty and Liability Insurance Company*, 391 U.S. 73 (1968) and *Levy v. Louisiana*, 391 U.S. 63 (1968) have been awarded by statute in Georgia as the Georgia Wrongful Death Statutes allow an illegitimate child to bring a suit for the death of his mother and the mother of an illegitimate child to bring an action for the death of said child.

Outside of the legitimate state interests recognized by the Georgia Supreme Court of promoting the rearing of children in a marital relationship; of removing problems of proof of paternity in wrongful death actions; of encouraging fathers of illegitimate children to legitimate the child by petition (*Georgia Code Annotated* § 74-103) or by marrying the mother (*Georgia Code Annotated* § 74-101), Appellee respectfully submits that another legitimate state interest to be served in denying the natural father of an illegitimate child, regardless of the amount of support provided to the child, the right to sue for the alleged wrongful death of

the child, is the very legitimate state interest of encouraging the settlement of disputes between parties and avoiding litigation.

In *Williams v. First National Bank of Pauls Valley*, 216 U.S. 582, 595 (1910), this Court stated that "compromises of disputed claims are favored by the courts (*Hennessy v. Bacon*, 137 U.S. 78 . . .)." If this Court were to rule, as requested by Appellant, that the natural father of an illegitimate child has a right of action for the death of the child, when there is no natural mother in life, no defendant could ever settle a case with certainty. Although in the case at bar, the natural father was known, this would obviously not be true in the vast majority of cases. A defendant would be faced with the distinct possibility of paying twice or going to the problem and expense of attempting to locate a natural father which, after a period of time, would be practically impossible. Additionally, a holding that the natural father could bring an action for the death of an illegitimate child could cause a deluge of spurious and nuisance suits which a defendant would be compelled to defend and attempt to prove lack of paternity. As the Georgia Legislature has provided in *Georgia Code Annotated* § 105-1309 for a right of action in the estate of a deceased person for the wrongful death of such person in a situation such as the instant one, would it not be better for the issue of paternity and the natural father's right to recover, if any, to be decided in the Probate Court in the contest involving the disbursement of the assets of the estate of the minor child?

As they now stand, the Georgia Wrongful Death Statutes provide a very orderly scheme for the prosecution of suits involving the death of a party. To rule in favor of the Appellant would interject confusion and chaos into such system. This in itself, Appellee respectfully submits, is a legitimate state interest to be served in affirming the decision of the Georgia Supreme Court and dismissing the appeal taken herein.

II.
CONCLUSION

As no substantial federal questions are presented by Appellant's contentions, Appellee respectfully submits that probable jurisdiction should not be noted; and Appellee's motion to dismiss the appeal should be sustained.

Respectfully submitted,

DYE, MILLER, BOWEN
& TUCKER

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A. MONTAGUE MILLER

_____

THOMAS W. TUCKER

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CERTIFICATE OF SERVICE

I, A. Montague Miller, Counsel for the Appellee in the above styled action, do hereby certify that I have served three copies of the within and foregoing MOTION OF APPELLEE TO DISMISS APPEAL upon:

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Administratrix of the Estate of
Lemuel Moreen Parham, Deceased)

The above listed parties are all parties which the Rules of the United States Supreme Court require service in compliance with Rule 33 of the Rules of the United States Supreme Court by depositing three true and correct copies of the same in the United States Mail, properly addressed, and with sufficient postage affixed thereon.

This ____ day of August, 1978.

A. MONTAGUE MILLER

ATTORNEY FOR ELLIS
FRANKLIN HUGHES